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IN THE

Supreme Court of the United States

October Term, 1973

No. 73-1475

HARRIS COUNTY COMMISSIONERS COURT, et al.,
Appellants
v.
RICHARD E. MOORE, et al., *Appellees*

On Appeal From The United States District Court For The Southern District of Texas, Houston Division

BRIEF FOR THE APPELLANTS

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BRIEF FOR THE APPELLANTS

OPINION BELOW

The judgment order (R. 363) and opinion (R. 372) of the District Court are as yet unreported. A copy of the judgment order and of the opinion are appended hereto as Exhibits A and B, respectively.

JURISDICTION

The judgment of the District Court was entered January 30, 1974. On February 4, 1974, by order of Mr. Justice Powell, the execution and enforcement of the District Court judgment was stayed pending further order of the Supreme Court. On February 19, 1974, the Supreme Court denied the Appellees' motion to vacate Mr. Justice Powell's stay order.

Appellants' Jurisdictional Statement was filed April 3, 1974, and probable jurisdiction was noted June 3, 1974. This appeal being one from the judgment of a District Court of three judges granting a permanent injunction restraining the enforcement, operation and execution of a state statute, the jurisdiction of the Supreme Court rests on 28 U.S.C. 1253.

STATUTE INVOLVED

Article 2351½, Vernon's Annotated Texas Civil Statutes (Acts 1965, 59th Tex. Leg., p. 1523, ch. 664, sec. 1, eff. August 30, 1965), provided as of the dates involved in this case, and presently so provides, in section (c) thereof:

> "When boundaries of justice of the peace precincts are changed, so that existing precincts are altered, new precincts are formed, or former precincts are abolished, if only one previously elected or appointed justice of the peace or constable resides within a precinct as so changed, he shall continue in office as justice or constable of that precinct for the remainder of the term to which he was elected or appointed. If more than one justice or constable resides within a precinct as so changed, or if none resides therein, the office shall become vacant and the vacancy shall be filled as other vacancies; provided, however, that

in precincts having two justices, if two reside therein, both shall continue in office, and if more than two reside therein, both offices shall become vacant." See Exhibit C hereto for the full text of the statute.

QUESTION PRESENTED

Whether Article 2351½ (c), Vernon's Annotated Texas Civil Statutes, either facially or as applied in this case, violates the equal protection guarantee by providing that following a redistricting by a county of its justice precincts if in any such precinct there reside an excessive number of justices of the peace or constables for the limited number of such positions authorized therein, such positions shall become vacant to be filled as other vacancies?

STATEMENT

Appellants, hereinafter referred to as the Commissioners Court, collectively comprise the general governing body of Harris County, Texas. The duties and responsibilities of such a unit of state government were reviewed at length by the Supreme Court in *Avery v. Midland County, Texas,* 390 U.S. 474. Among such duties and responsibilities is that set out in Article 5, Section 18 of the Texas Constitution as follows:

> "Each organized county in the State now or hereafter existing, shall be divided from time to time, for the convenience of the people into precincts, not less than four and not more than eight. *Divisions shall be made by the Commissioners Court provided for by this Constitution.* In each such precinct there shall be elected one Justice of the Peace and one Constable, each of whom shall hold office for four years and until his successor shall be elected and qualified; provided that in any precinct in which there may be a city of 8,000 or more inhabitants, there shall be elected two Justices of the Peace.

* * *" See Exhibit D hereto for the full text of this Section.

The foregoing constitutional provision, embodied in the state's constitution ratified by the people of Texas on February 15, 1876, has been amended only once, on November 2, 1954, to the extent only of increasing the term of office of the officers in question from two to four years.

As stipulated by the parties in this cause, Harris County was last divided into the eight precincts in question in the year 1876 (Bass Deposition, p. 56). To correct the evils attendant upon the severe malapportionment among such precincts that had developed in the ensuing 97 years, the Commissioners Court on March 12, 1973, appointed a committee of nine persons to study and recommend plans for redistricting such precincts as well as the county's four commissioner precincts (Bass Deposition, p. 55). Such committee consisted of a county commissioner, a justice of the peace, a constable, a black, a chicano, a Republican, a Democrat, a woman and a University professor with expertise in working with redistricting plans (Bass Deposition, pp. 7-9 and Exhibit 1 thereto; Rankin Deposition, pp. 28-32).

A considerable number of public meetings of the committee as well as public meetings held by the Commissioners Court (Bass Deposition, pp. 30, 62-64), all of which were given wide publicity in various newspapers throughout the county (Bass Deposition, p. 64), the Commissioners Court on June 8, 1973, adopted a plan for redistricting the four county commissioner precincts which met the strict requirements of the one-man, one-vote principle of *Avery*, supra (Stipulation Exhibit 1, R. 225, and Map Exhibit No. 9). Thereafter on June 28, 1973,

the Commissioners Court adopted a plan for redistricting the county's eight justice precincts to become effective July 1, 1973 (Stipulation Exhibit 2, R. 226, and Map Exhibits 7 and 8).

The stated purposes for redistricting the justice precincts were to eliminate to as great an extent as practicable the gross population disparities existing between such precincts (Stipulation Exhibit 2, R. 226 and Bass Deposition, p. 67); to more fairly apportion the workload of justices of the peace and constables because of the equal pay received by the respective officers within each class (Elliott Deposition, pp. 9-10, 27); to redraw the precincts in such a manner as to follow ethnic patterns where possible to promote minority participation (Bass Deposition, pp. 18, 30-32); to provide a greater availability of services by authorizing a second justice in Precincts 2 through 8 which, unlike Precinct 1 which had two such positions, therefore had had only one justice (Bass Deposition, pp. 56-57; Elliott Deposition, p. 10); and to redraw the precinct lines on the basis of census tract lines (Bass Deposition, pp. 17-18).

The population counts of the eight justice precincts, before and after the redistricting (Stipulation Exhibits 10 and 11, R. 232, 243 and Map Exhibits 7 and 8), follow:

Precinct	*Before*	*After*
1	999,424	343,765
2	436,974	146,054
3	111,106	169,997
4	81,879	175,769
5	6,966	337,844
6	8,848	180,101
7	11,976	238,401
8	84,739	149,981

Because of the exceedingly small population counts of Precincts 4, 5, 6 and 7 and of their geographical contiguity prior to the realignment, as a result of the redistricting new Precinct 4 was comprised of an area formerly made up of all of old Precincts 4, 5 and 7, and portions of old Precincts 3 and 6 (R. 219 and see Exhibits E and F hereto for the geographical outlines of the eight precincts before and after the redistricting). Because of the location of their respective residences, four justices of the peace and three constables of certain of these former precincts as they existed prior to redistricting, ended up as residents of the new Precinct 4 (Bass Deposition, pp. 42-45).

Article 1.05 of Vernon's Annotated Texas Election Code (Exhibit G hereto) requires that the person holding such an office as justice of the peace or constable reside in the precinct for which such office is filled. To provide for just such a situation as occured here, i.e., when as a result of a redistricting of a county's justice precincts there are more than two justices or more than one constable ending up residing in a precinct as so changed than there are offices existing therefor, viz., two justice and one constable posts, the Texas Legislature in 1965 enacted Article 2351½, subsection (c) of which provides:

> "*When boundaries of justice of the peace precincts are changed, so that existing precincts are altered, new precincts are formed, or former precincts are abolished,* if only one previously elected or appointed justice of the peace or constable resides within a precinct as so changed, he shall continue in office as justice or constable of that precinct for the remainder of the term to which he was elected or appointed. *If more than one justice or constable resides within a precinct as so changed,* or if none resides therein,

> *the office shall become vacant* and the vacancy shall be filled as other vacancies; provided, however, that *in precincts having two justices,* if two reside therein, both shall continue in office, and *if more than two reside therein, both offices shall become vacant.*"

Because of the fact that following the redistricting in question, four justices of the peace and three constables of the former precincts resided in new Precinct 4, the two justice of the peace and one constable positions authorized for such precinct were vacated by reason of the foregoing statute. The Commissioners Court then, under Article 2355, Vernon's Annotated Texas Civil Statutes (Exhibit H hereto), proceeded to fill such vacancies. In filling such vacancies the Commissioners Court appointed one of the three former constables to fill the one authorized constable position (Bass Depostion, pp. 44-45), and one of the four former justices of the peace to fill one of the two authorized justice positions (Bass Deposition, pp. 43-44).

On the day that the order of redistricting was passed, June 28, 1973, one of the Appellees herein, Moore, filed suit to enjoin such action in a State District Court, which under state constitutional Article 5, Section 8 and state statutory Article 1908 (Exhibit I hereto), has appellate jurisdiction and general supervisory control over the Commissioners Court. The State Court on a hearing the following day denied a temporary injunction (R. 219).

Thereafter on July 20, 1973, and without further exhausting the State remedy thus invoked, Moore, joined by Bolton, both deposed constables, and Doering, Mahan and Zaboroski, deposed justices of the peace, together with two citizens who had resided in one or the other of the old precincts and who now reside in new Precinct 4, viz.,

Appellees Boynton and Neeley, instituted this suit in the United States District Court for the Southern District of Texas, Houston Division In response the Commissioners Court filed a Motion To Dismiss on the grounds that such suit raised no substantial federal question and that inasmuch as there was then pending in a state court a cause of action involving the same issues of fact and law, viz., the suit filed by the Appellee Moore, the District Court should abstain from deciding on the matters in controversy until the Plaintiffs had exhausted their adequate state remedy (R. 161).

The matter was heard on oral arguments only on January 30, 1974, and the Court issued its judgment order on that day (R. 363). In its Opinion issued February 8, 1974 (R. 372), the District Court delared that insofar as Article 2351½, V.A.T.C.S., operates to terminate the term of a duly elected justice of the peace or constable upon the circumstance that a redistricting places him in a precinct with other such officers, it invidiously and irrationally discriminates between him and other such officers in other precincts not so affected. Additionally, the District Court declared that the effect of such statute in cutting short the term of such officers also constituted an impermissible abridgement of the franchise of those voters who had been entitled to vote for them. Underlying both of these conclusions, the District Court found that no compelling state interest is served to justify such effects of the statute.

SUMMARY OF ARGUMENT

The people of Texas by their constitution have vested in the Commissioners Court of each of the state's 254 counties the responsibility to divide, and when compelling and justifying reasons call for such, to redivide from time

to time, its county into a certain number of justice precincts, not less than four nor more than eight, for the election within each of not more than two justices of the peace and one constable. Article 5, Section 18, Vern. Ann. Tex. Const. Additionally, the Legislature has prescribed that such precinct officers must be residents of the precinct in which they serve. Article 1.05, Vern. Ann. Tex. Election Code.

In this case the Commissioners Court of Harris County, pursuant to its constitutional responsibility in the face of a compelling need to redistrict the county's eight justice precincts because of their severe malapportionment, arising from the fact that they had last been apportioned in the year 1876, realigned such precincts. Because the smallest precincts were contiguous one to another prior to the realignment, the redistricting necessarily resulted in one new precinct incorporated their area which in turn resulted in there being more justices and constables of such former precincts residing in the new precinct than there were positions authorized to be filled therein.

Prior to 1965 the judicially applied law of Texas under constitutional Article 5, Section 18 was such that following such a redistricting as occurred here, all the justice and constable positions in all eight new precincts would have been considered vacant to be filled anew by appointment made by the Commissioners Court. In that year the Legislature enacted statutory Article 2351½, Vern. Ann. Tex. Civ. Stat., Section (c) of which provides that following such a redistricting a vacancy would occur only in such instances when no previously elected or appointed justice or constable resided in a new precinct, or when, as a result of the realignment there resided in a new precinct an excessive number of such officers for the posi-

tion or positions authorized therein. Otherwise, all such officers would be entitled to continue in office for the remainder of their elective or appointive terms.

In the instant case because of the fact that in new Precinct 4 following the redistricting, there were four justices of the peace and three constables of certain of the former precincts residing therein, with only two justice and one constable positions authorized to be filled, these positions were deemed vacated by the effect of Article 2351½ (c).

This statute is simply an expression of State policy providing for its own political and internal administration and is clearly within a State's power to create for purely state purposes certain local offices and when compelling and justifying reasons call for its exercise, to abolish or vacate such offices. Appellees' claimed right to continue in their offices until the expiration of their terms must give way to the public's right to have the precincts in question reapportioned from time to time and to continue to have the residents therein represented by officers who themselves reside within the respective precincts which they serve.

Additionally, a compelling reason calls for invoking the doctrine of abstention in this case. The state courts should be afforded the opportunity to determine the question of whether the offices in question are "county offices" within the meaning of the Texas constitutional requirement relating to residence. If so, only residence within the county, as distinguished from residence within the justice precincts, would be required of the officers in question and Article 2351½ (c), insofar as it attempts to make residence within the precinct a qualification for continuing in office following a redistricting, would, therefore, be

unconstitutional under the state constitution. Such a determination by the state courts would, of course, render unnecessary a federal constitutional decision under the Fourteenth Amendment.

ARGUMENT

I. THE VACATING OF THE OFFICES IN QUESTION PURSUANT TO ARTICLE 2351½(c) WAS NOT VIOLATIVE OF THE EQUAL PROTECTION GUARANTEE OF THE FOURTEENTH AMENDMENT, SINCE COMPELLING STATE INTERESTS WERE SERVED AND SINCE SUCH OFFICES ARE LOCAL OFFICES CREATED FOR PURELY STATE PURPOSES AND THEIR CREATION, REARRANGEMENT OR ABOLISHMENT FOR COMPELLING STATE REASONS RELATE SOLELY TO THE INTERNAL ADMINISTRATION OF THE STATE'S POLITICAL STRUCTURE.

> "The controversy relates exclusively to the title to a state office, created by a statute of the state, and to the rights of one who was elected to the office so created. Those rights are to be measured by the statute and by the Constitution of the state, excepting in so far as they may be protected by any provision of the Federal Constitution. * * * In its internal administration the state (so far as concerns the Federal government) has entire freedom of choice as to the creation of an office for purely state purposes, and of the terms upon which it shall be held by the person filling the office." *Wilson v. North Carolina,* 169 U.S. 586, 592; *Taylor v. Beckham,* 178 U.S. 548, 573.

In *Higginbotham v. City of Baton Rouge,* 306 U.S. 535, 539, the Supreme Court, quoting from the case of

Newton v. Mahoning County Commissioners, 100 U.S. 548, 557, declared:

> ". . . 'the legislative power of a State, except so far as restrained by its own Constitution, is at all times absolute with respect to all offices within its reach. It may at pleasure create or abolish them, or modify their duties. It may also shorten or lengthen the term of service.' "

In *Snowden v. Hughes,* 321 U.S. 1, 8, the Supreme Court declared:

> ". . . . The right to become a candidate for state office, like the right to vote for the election of state officers, Minor v. Happersett, 21 Wall. 162, 170-178, 22 L.Ed. 627; Pope v. Williams, 193 U.S. 621, 623, 24 S.Ct. 573, 575, 48 L.Ed., 817; Breedlove v. Suttles, 302 U.S. 277, 283, 58 S.Ct. 205, 208, 82 L.Ed. 252, is a right or privilege of state citizenship, not of national citizenship which alone is protected by the privileges and immunities clause. * * * Nor can we conclude that the action of the State Primary Canvassing Board, even though it be regarded as state action within the prohibitions of the Fourteenth Amendment, was a denial of the equal protection of the laws. The denial alleged is of the right of petitioner to be a candidate for and to be elected to public office upon receiving a sufficient number of votes. * * * But not every denial of a right conferred by state law involves a denial of the equal protection of the laws, even though the denial of the right to one person may operate to confer it on another."

In *Gomillion v. Lightfoot,* 364 U.S. 339, 347, the Supreme Court declared:

> "When a State exercises power wholly within the domain of state interest, it is insulated from federal

> judicial review. But such insulation is not carried over when state power is used as an instrument for circumventing a federally protected right."

And in *Sailors v. Board Of Education Of County Of Kent,* 387 U.S. 105, 109, the Supreme Court declared:

> ". . . . Save and unless the state, county, or municipal government runs afoul of a federally protected right, it has vast leeway in the management of its internal affairs."

Granted that in none of the foregoing cases was the unique factual situation confronting the Supreme Court in the instant case involved, it is nevertheless respectfully submitted that the principle enunciated in such cases clearly finds application in this case. Essentially, that principle, within the factual context of this case, is that the controversy relates exclusively to the title to certain of the state's local offices created by the state's constitution and statutes, and to the rights of persons who were elected to the offices so created. Thus in the application of Article 2351½(c) on the redistricting question, the State of Texas, acting by and through Harris County Commissioners Court, was acting solely with regard to the management of its own internal affairs and exercising power wholly within the domain of state interest.

Where then, it must be asked, did the State run afoul of a federally protected right *(Sailors),* or how was State power used in this instance as an instrument for circumventing a federally protected right *(Gomillion)*? Appellees would urge, and the District Court so held, that the effect of Article 2351½(c) on the redistricting in question, of cutting short the Appellees' terms of office while other such officers in other precincts were not so affected, in-

vidiously and irrationally discriminates against the Appellees.

Such challenge to the statute overlooks, however, the important State interest served by the precinct residency requirement of Article 1.05 of the Texas Election Code, which the Texas Legislature obviously had in mind in the enactment of Article 2351½(c). Furthermore, it overlooks the Texas courts' numerous holdings, more fully treated later in this brief, that such offices as those in question are and must be taken subject to a future necessity for changing the boundaries of the precincts and the consequent abolishment or vacating of the offices. Thus the possibility of a future redistricting and the effect of such a statute as Article 2351½(c) on the right of holders of such offices at the time such a redistricting takes place, like the qualifications for such offices, merely constitute one of the terms and conditions upon which such offices shall be sought and held by the persons seeking such offices.

As against the Appellee's claim that they were irrationally and invidiously discriminated against by reason of the effect of Article 2351½(c) cutting short their terms of office while other such officers in other precincts were not so affected, it is submitted that the overwhelming need for the redistricting in question in the first instance, which in itself gave rise to the necessity for combining several of the smallest precincts to form the specific new precinct in question to achieve some degree of reasonable apportionment, which in turn caused the excess of officers for the positions authorized therein, and the compelling state interest of requiring such precinct officers to reside in the precinct which they serve, override Appellees' equal protection claim and fully justified the vacating of the offices in question.

A. History of the Texas Law

Article 5, Section 8 of the Texas Constitution, supra, which enjoins upon the Commissioners Court of each Texas county the duty to divide, and when compelling and justifying reasons call for such, to redivide from time to time, its county into precincts, not less than four and not more than eight, for the election within each of not more than two justices of the peace and one constable, was adopted by the people of Texas in the ratification of the state's present constitution on February 15, 1876. Gammell's Laws of Texas, 1822-1897, Volume 8, page 779.

The first reported state case to pass on this provision was that of *State ex rel. Dowlen v. Rigsby,* 43 S.W. 271 (Tex. Civ. App. 1897, application for writ of error denied by the Texas Supreme Court at 43 S.W. 1101 for the reason that the case "was correctly decided in the court of civil appeals"). The Texas court declared:

> ". . . The power to divide the county into justices' precincts is also given by the statute, but not in terms so explicit as those used in the constitution. Rev. St. 1895, art. 1537. There can be no doubt that both constitution and statute confer the power, and the only question is as to its extent. *It is contended that a limitation upon the power is found in the constitutional provision fixing the terms of office* of precinct officers; *and that, since they are to hold for two years* (now four), *it follows that the precincts cannot be changed during the terms, because the power to alter them would practically enable the court to destroy the office.* The language of the constitution expresses no such limitation. The division is to be made 'from time to time.' The reason for the division is to be the convenience of

the people; and the judge, both as to time and convenience is the court.

* * *

". . . *the power to establish the precincts does not necessarily conflict with the provision fixing the terms of office. They must stand together. The office is taken subject to the power to change the boundaries of the precincts.* This is no anomaly in our law. All county officers whose compensation is derived from perquisites, and therefore depends to some extent on the territory in which they exercise their functions, hold their offices subject to lawful power to alter that territory. *While the office is property, it is held subject to the proper exercise of all such powers as these.* There is no contract between the state and its officers which forbids such action. Mechem, Pub. Off. § 855."

In the subsequent case of *Williams v. Castleman,* 247 S.W. 263 (Tex. Sup. Ct. 1922), the Texas Supreme Court reviewed at length the history of Article 5, Section 18, tracing it back to the Constitution of the Republic of Texas, and declared:

". . . The Constitution has prescribed that the power of determining the number of justice precincts, and of dividing the county into them, shall be exercised 'from time to time,' which means it has a potential existence at all times, and the division, redivision, or redetermination may be made at any time.

* * *

"It is thus seen that there is no limitation on the time when the commissioners' court may divide a county into justice precincts, and that, aside from the maximum and minimum prescribed in the Constitution, there is no limitation as to number. The Constitution does not state how the power of division

by the commissioners' court shall be exercised, nor does the statute. * * * *It is certain that, in the absence of reasonable legislative action, the commissioners' court may perform the duty enjoined upon them in their own way, so long as that performance does not amount to a gross abuse of power, is not fraudulently exercised, or is not so grossly arbitrary as that, under principles unnecessary to discuss, it might be void and amount to no action."*

In the later case of *Ward v. Bond,* 10 S.W.2d 590 (Tex. Civ. App. 1928, no writ history), the Texas Court of Civil Appeals declared:

> *"That a commissioners' court has authority to change precinct lines and redistrict the county, even in part, although in doing so a justice of the peace is deprived of his office, is settled in the case of State v. Rigsby,* 17 Tex. Civ. App. 171, 43 S.W. 271. The fact that in the instant case certain candidates and commissioners who formerly lived in precincts 1, 2 and 3 have now become residents of other precincts, and that the change has resulted in putting two commissioners, who formerly lived in other precincts, in the same precinct, is no ground for annulling the order. If, as held in the Rigsby Case, *a duly elected officer has no such vested right to his office as will enable him to prevent redistricting the county, then surely a candidate, though a party nominee, has no such right."*

In 1962, the Attorney General of Texas in an advisory opinion, No. WW-1251, February 2, 1962, declared the Texas law to be as follows:

> "The Commissioners' Court may abolish old justice precincts and re-divide the county into new justice precincts at any time, so long as there is a mini-

> mum of four and not more than eight justice precincts in the county. *When such justice precincts are abolished the offices in the old precincts become vacant and the officers of the newly created justice precincts must be appointed by the Commissioners Court.*"

Upon a review of the Texas law prior to the 1965 enactment of Article 2351½(c), there can be no question that one seeking and gaining the post of either justice of the peace or constable took either of such offices subject to the power of the Commissioners Court, pursuant to the needs of the people in its county, to change the boundaries of the various justice precincts, and in so doing deprive such officers of filling out their respective terms of office. As said in *Ward v. Bond* above, such "a duly elected officer has no such vested right to his office as will enable him to prevent redistricting the county" by a Commissioners Court. Of course, the power residing in a Commissioners Court to redistrict was not, nor is now, an unbridled one. As the Texas Supreme Court declared in *Williams v. Castleman* above, the duty enjoined upon them can only be performed "so long as that performance does not amount to a gross abuse of power, is not fraudulently exercised, or is not so grossly arbitrary as that, under principles unnecessary to discuss, it might be void and amount to no action." To this end any aggrieved office holder whose office is vacated by reason of a redistricting can challenge such action in a Texas District Court, which under state constitutional Article 5, Section 8 and state statutory Article 1908, has "appellate jurisdiction and general supervisory control over the Commissioners Court."

When considered in the light of the pre-existing state of the Texas law, the 1965 enactment of Article 2351½

(c) was very obviously intended to ameliorate the effect of a redistricting on the vacating of offices. It was clearly intended to limit to as few as possible the number of vacancies theretofore caused by a redistricting, by requiring a commissioners court to retain in office all those officers residing in those newly-redistricted precincts which do not end up with a surplus of such officers to fill the limited number of positions authorized, keeping in mind the statutory requirement that such precinct officers must reside in the precinct which they serve. It is easily conceivable that in a redistricting which does not involve the vastly disproportionate precincts which had to be contended with in this case, no new precinct would wind up with an excessive number of officers, resulting in no vacancies occurring.

Shortly after the statute was enacted, the Attorney General of Texas in advisory Opinion No. M-68, May 8, 1967, construed section (c) to be a legislative usurpation of power constitutionally invested in a county commissioners court, declaring "that the Commissioners Court may, if they desire, effectuate a plan of succession of the type contemplated by Article 2351½(c), supra, but that their power to create vacancies or abolish offices cannot be taken away by the enactment of legislation."

Had the Commissioners Court in this case adopted the view of the Texas Attorney General and ignored the statute, their redistricting action, in effectually abolishing all eight of the former precincts, would have resulted in vacating all of the justice and constable positions in all of the eight precincts, not merely in new Precinct 4. To what then would a Fourteenth Amendment equal protection claim attach? In such case all of the justice and constables in all eight of the county's precincts would

have had their offices vacated and all, together with all of the voters residing in each of the precincts, would have been treated equally and alike.

In such event, the Appellees would have been reduced merely to the claim that having once succeeded to the state offices in question they could not be divested of same by any state action no matter how compelling the need for a reapportionment of the precincts, or failing that, that the requirement that they reside in the precinct for which the office has been created is federally untenable. It is submitted that they would fail on either ground for reasons hereinafter set out.

B. Compelling State Interests Were Served By The Redistricting And By The Application Of Article 2351½(c)

(1) The Compelling Need For Redistricting

There can be little question of the critical overriding need for the redistricting of the County's eight justice precincts. They had originally been aligned in the year 1876, not been realigned since and as a consequence had become severely malapportioned. The population counts ranged from the low figures of 6,966, 8,848 and 11,976 in Precincts 5, 6 and 7, respectively, to the high figures of 999,424 and 436,974 in Precincts 1 and 2, respectively.

Obviously, the services affordable by one justice and one constable to the residents in Precinct 2 with its population of 436,974 would on the face of it clearly seem to be grossly unequal to the same services from a like number of such officers available to the residents of Precinct 5 with its count of 6,966. Additionally, the salaries for all justices were the same in each of the precincts, as

were those for each of the constables, which in itself was unequal treatment for those officers serving in the vastly more densely populated precincts. The evils of so severe a malapportionment of precincts as existed here prior to the redistricting are self-evident.

(2) Texas' Precinct Residency Requirement: The Compelling State Interest Served By The Effect Of Article 2351½(c)

Implicitly embodied within the meaning and effect of Article 2351½(c) is Texas' long-standing requirement that precinct officers such as justices of the peace and constables reside within the respective precincts which they are elected or appointed to serve. Such requirement was initially enacted into law by the 36th Texas Legislature in the year 1919. Gammel's Laws of Texas, 1918-1919, volume 19, page 17. Such law is now embodied in Article 1.05, Vernon's Annotated Texas Election Code (appended as Exhibit G hereto).

Article 1.05 prescribes a six-months pre-election residency requirement for such offices and in the case of *Whitmarsh v. Buckley*, 324 S.W.2d 298 (Tex. Civ. App. 1959, no writ history), in which a portion of one school district was deannexed and added to another and the plaintiffs were seeking to enjoin two trustees of the reduced district from continuing to serve because they no longer resided in such district by reason of the deannexation, the Texas Court of Civil Appeals declared:

> "We think the term 'precinct' is used in a general sense to include all political units within the county, except municipal, that are less than county-wide in area. *The evident purpose of the statute is to require representation of a political unit by one who is elect-*

> *ed who resides in the unit he is to serve.* It is true that it does not deal specifically with removal from office upon cessation of residence once a person has been elected, but it would in effect be meaningless if it is interpreted as restrictive only of residence at the time of election and qualification. If it is so restricted, a person could be elected and qualify and then move out of the political unit and yet continue to act in an official capacity when he is no longer affected by the acts he performs. A statute should be liberally construed to effect the intention of the legislature. *It has ever been traditional with Texas to require representation by elective officers who are residents of the political unit for which the elected officer acts.*"

In *Hadnott v. Amos,* 320 F. Supp. 107 (1970), affirmed by the Supreme Court at 401 U.S. 968, the three-judge United States District Court for the Middle District of Alabama, in passing on a similar Alabama statute which required a twelve-month pre-election residency, *as well as residency during continuance in office,* for circuit judges of that state, declared the following:

> "The State of Alabama has a compelling state interest in exposing to the voters for a substantial period of time before election the person who will be a candidate for state circuit judge.
>
> * * *
>
> "We consider it to be of urgent importance that the voter have an opportunity to observe, learn about and appraise those who seek to be candidates for a key judicial office that touches important events and relationships of their lives and of the community in which they live. There are innumerable qualities and qualifications that are relevant."

No less important considerations apply to a Texas justice of the peace. Justice courts exercise original jurisdiction in all civil cases where the amount in controversy is two hundred dollars or less; in all cases of forcible entry and detainer, and all cases involving foreclosure of mortgages and the enforcement of liens on personal property, where the amount in controversy is within their jurisdiction; they have the power to issue writs of attachment, garnishment, and sequestration within their jurisdiction; they act as a Small Claims Court in all actions for the recovery of money, not exceeding the sum of one hundred fifty dollars; they have jurisdiction in all criminal cases involving misdemeanors for which the fine to be imposed does not exceed two hundred dollars; they have the power to issue warrants of arrest, advise an accused of his rights, set bail without restrictions as to amount; conduct examining trials, commit defendants to jail; and to take forfeiture of all bonds given for the appearance of any party at their courts, regardless of amount. Article 2385 et seq., 2460a, Vern. Ann. Tex. Civ. State.; Articles 4.11, 4.13, 15.01 et seq., Vern. Ann. Tex. Code of Crim. Proc.

In *Detroit Police Officers Ass'n v. City of Detroit*, 190 N.W.2d 97 (Mich. Sup. Ct. 1971), appeal dismissed "for want of a substantial federal question" by the United States Supreme Court at 405 U.S. 950, the Michigan Supreme Court, in striking down a constitutional challenge against a city ordinance requiring that police officers reside within the City of Detroit, declared:

> "The job of a policeman does have 'natural distinguishing characteristics' from all other city employees. There is a special relationship between the community policed and a policeman. A policeman's very presence, whether actually performing a speci-

fied duty during assigned hours, or engaged in any other activity during off duty hours, provides a trained person immediately available for enforcement purposes." Also, see *Ahern v. Murphy,* 457 Fed.2d 363 (7th Cir.).

The same considerations of course apply to the Texas requirement that a constable reside within the precinct in which he serves. He, like a city policeman, is also a peace officer authorized to make arrests. Additionally, he is charged with executing all process, warrants and precepts, and attending upon the justice courts in his precinct. Article 6878 et seq. The Texas requirement that its justices and constables live within the specific precincts for which they are elected or appointed to serve is not at all unlike the federal requirement that District Judges and Marshalls reside in the districts for which they are appointed to serve. 28 U.S.C.A. 134 and 561.

In light of the foregoing reasons it is respectfully submitted that the District Court clearly erred in failing to find that the precinct residency requirement of Texas Election Code 1.05, implicit in Article 2351½(c), did indeed constitute a State interest compelling enough to justify the effect of vacating the precinct offices in question while not affecting other like offices in other such precincts.

(3) Basis for the different treatment accorded to County Commissioners on the one hand and justices of the peace and constables on the other

The District Court took the view that it was not compelling that the offices in question be declared vacant inasmuch as "the analogous section pertaining to county

commissioners, Art. 2351½(b), expressly provides that the term of office of a county commissioner is not to be affected by redistricting, even though its effect may be to place his residence outside the precinct for which he was elected." This view overlooks the fact that county commissioners in Texas, unlike justices of the peace and constables, are not officers of the particular precincts from which they are elected; they are county officers serving the entire county. Justices of the peace and constables, on the other hand, are precinct officers within the meaning of Article 1.05, Vern. Ann. Texas Election Code, appointed or elected to serve the specific particular precincts for which their respective positions have been created.

In *Childress County v. Sachse,* 312 S.W.2d 380 (Tex. Sup. Ct. 1958), the Texas Supreme Court, in a per curiam opinion refusing an application for writ of error with the notation "no reversible error," expressly approved the holding of the Court of Civil Appeals (310 S.W.2d 414) by declaring "that changes in precinct boundaries do not create a vacancy in the office of County Commissioner or deprive the incumbent of the right to hold office for the remainder of his term, even though by reason of such changes his residence is not within the precinct as redefined." That the Texas Supreme Court refused the application for writ of error with the notation "no reversible error" and found it necessary to strictly define its approval of the holding only of the Court of Civil Appeals decision is not without significance in Texas. Under Rule 483, Vernon's Annotated Texas Rules of Civil Procedure, such a notation signifies that "the Supreme Court is not satisfied that the opinion of the Court of Civil Appeals in all respects has correctly declared the law, but is of the opinion that the application (for writ of error) presents no error which requires reversal."

In the subsequent case of *Whitmarsh v. Buckley,* 324 S.W.2d 298 (Tex. Civ. App. 1959), discussed earlier, an action in which a portion of one school district was deannexed and added to another and the plaintiffs were seeking to enjoin two trustees, one elective and the other appointive, from continuing to serve because they no longer resided in such district by reason of the deannexation, the Texas Court of Civil Appeals, in holding that the two trustees were no longer eligible to hold their offices, declared:

> "We find nothing in our holding contrary to the case of Childress County v. Sachse, Tex. Civ. App., 310 S.W.2d 414, writ refused, n.r.e. Tex., 312 S.W. 2d 380. In that case the Court held that a county commissioner, who was no longer a resident of the precinct from which he was elected because the Commissioners Court had changed the precinct lines, did not thereby vacate his office. However, a county commissioner is merely elected from a precinct that is created for the convenience of the people under the mandate of Article 5, Section 18 of the Constitution. He is not, however, an officer of that political subdivision. He is a county officer serving the entire county as a member of the Commissioners Court, which as a body is the governing unit for the whole county. He is elected, not to act authoritatively for just his precinct. He is elected to serve the whole county. In the Sachse case, Sachse still lived in the political unit he was elected to serve, to wit, Childress County."

The holding in *Childress County v. Sachse,* supra, relating to County Commissioners, was enacted into law as Section (b) of Article 2351½. See *Villareal v. Bustamente,* 480 S.W.2d 231 (Tex. Civ. App. 1972, no writ history). It was obviously with the holdings of both

Childress County v. Sachse and *Whitmarsh v. Buckley* in the background that the Texas Legislature in enacting Article 2351½(c) distinguished between county commissioners on the one hand and justices of the peace and constables on the other, with respect to the automatic vacating of their offices based on residency following a redistricting of their respective precincts. It is submitted that the differing treatment, however harsh it may fall on one class as opposed to the other, is reasonably necessary to accomplish a legitimate state objective, viz., to insure representation of citizens within defined political units by officers who themselves reside in such units. *Whitmarsh v. Buckley; Hadnot v. Amos; Detroit Police Officers Ass'n v. City of Detroit,* supra.

(4) Necessity of effecting redistricting in mid-term.

With regard to the District Court's view that "Certainly it was not necessary to effect redistricting in mid-term," under the apparent impression that it could have been done so as to coincide with the expiration of the terms of the officers in question so that such terms would not have been cut short, it is submitted that under state constitutional Article 16, Section 65 (Exhibit J hereto), providing for the staggering of the various terms of the offices in question, *no* redistricting could ever be effected which would not cut short the term of office of at least some of the officers in question.

Article 16, Section 65 provides for staggering the terms of office of justices of single justice precincts with constables so that such justices are elected at one general election for four years and constables are elected at the following general election for four years. In the case of a two justice precinct, as was Precinct One prior to the

redistricting and as all are following the redistricting, the justice of the uneven place number, viz., No. 1, runs at one general election for four years and the justice of the even place number, viz., No. 2, runs at the following general election for four years.

With regard to the specific office holders in this case, Appellees Moore and Bolton, the deposed constables, had begun serving their terms of office on January 1, 1973, and in the absence of the redistricting in question would have continued to serve until December 31, 1976 (R. 215-216). Appellees Doering, Mahan and Zaboroski, deposed justices of the peace, began their terms of office January 1, 1971 and would have been entitled to serve until December 31, 1974 (R. 216-217).

Thus, had the Commissioners Court chosen to make the redistricting in question effective at the end of the term of office nearest in time to their decision to redistrict, being that of the justices of the peace in question, viz., January 1, 1975, the two constables in question would still have had their terms of office cut short by two years. Once the necessity for redistricting is thus determined, it really becomes immaterial to the decision maker that some officers will have their terms of office cut short, since in any event no matter when the redistricting can be made to become effective such an occurrence will of necessity result (Bass Deposition, p. 38).

In *Pate v. El Paso County, Texas,* 337 F. Supp. 95, affirmed by the Supreme Court at 400 U.S. 806, the validity of state constitutional Article 16, Section 65, insofar as it provides for the staggering of the terms of office of Texas county commissioners of even versus uneven numbered precincts was upheld on the ground that it "insures that the commissioners court have some con-

tinuity in its membership and experience, thereby providing for more efficient and effective county government" (at page 98). And see *Robinson v. Zapata County, Texas,* 350 F. Supp. 1193; *Carr v. Brazoria County, Texas,* 341 F. Supp. 155, affirmed 468 Fed.2d 950. The same considerations, of course, apply to justify the staggering of the terms of office as between justices of the peace of even versus uneven numbered positions within a precinct as well as the staggering provided for between justices and constables.

(5) Effect of vacating the offices on the voters.

The District Court also took the view that the effect of Article 2351½(c) of prematurely ending the term of office of the five officers in question constituted an impermissible abridgement of the franchise "of those entitled to vote for them;" however, in *Pate v. El Paso County, Texas,* supra, the decision of which the Supreme Court affirmed at 400 U.S. 55, the voters affected by the redistricting involved there suffered no better fate than those in this case. While the voters' complaint in *Pate* was that because of the staggering effect of Article 16, Section 65, their opportunity to vote for a county commissioner would be postponed for two years, it is clear that after the redistricting of the commissioner precincts there involved, the voters in old commissioner precinct two who were shifted to new commissioner precincts one and three would no longer be represented by the elected commissioner for whom they had been entitled to vote in the last election. The same fate was suffered by the voters in *Carr v. Brazoria County, Texas,* supra, when voters in that county's commissioner precincts one and three were transferred to precincts two and four, as well as by the voters in *Robinson v. Zapata County, Texas,* supra, in which

after the redistricting there in question, *no* voter in all of that county's old commissioner precinct 4 was any longer represented by the commissioner for whom he had been entitled to vote at the last election.

Curiously, the District Court declared that if the redistricting here involved "were thought pressing" enough to have been effected in mid-term, "it was not compelling that the office be declared vacant as a result," thus intimating that no impermissible abridgment of the franchise would have been suffered by a voter if only the officer had been permitted to retain his office, even though his new precinct territory might not coincide in any manner with his old precinct area, as was the case with old and new precincts 5 and 7.

Whether as a result of the realignment of the precincts, a voter is no longer represented by the officer he was entitled to vote for at the last election either by reason of the fact that the realignment puts him outside the new precinct in which the officer continues to serve, as in *Pate, Carr* or *Robinson,* supra, or by reason of the fact that the officer's term has been cut short by reason of the effect of Article 2351½(c), as in this case, the effect is the same on the voter. In either case after a realignment he is no longer represented by the officer or officers he had been entitled to vote for at the last election.

In any event the need to correct the severe malapportionment existing in the precincts prior to the Commissioners Court's redistricting action in this case, coupled with the compelling state interest of requiring the officers in question to reside in the precincts which they serve, which resulted in the vacancies in question, clearly override the interests of voters in any particular precinct to have the continued service of the officer or officers for whom they had been entitled to vote in the last election.

II. THE DISTRICT COURT SHOULD HAVE ABSTAINED FROM DECIDING THIS CAUSE TO AFFORD THE TEXAS COURTS THE OPPORTUNITY TO DETERMINE WHETHER JUSTICES OF THE PEACE AND CONSTABLES ARE "COUNTY OFFICERS" WHOSE RESIDENCE NEED ONLY BE IN THE COUNTY, AS DISTINGUISHED FROM RESIDENCE WITHIN THE PRECINCTS, THE RESOLUTION OF WHICH IN FAVOR OF APPELLEES WOULD RENDER UNNECESSARY A FEDERAL CONSTITUTIONAL DECISION.

The validity of Article 2351½(c), under either the state or federal constitutions, has never been passed on by the Texas Supreme Court. In only one Texas Court of Civil Appeals decision has such a court been confronted with the actual application of section (c) of the statute.

In *Villareal v. Brooks County*, 470 S.W.2d 60 (Tex. Civ. App. 1971, no writ history), a justice of the peace whose office had been determined to be vacated by reason of a redistricting, like Appellees here, filed suit to determine title to the office. The trial court ruled against his reinstatement to office and on appeal, the Court of Civil Appeals declared that the evidence was conclusive that he had established a new residence within the new precinct prior to the time the redistricting became effective, and since he was the only previously elected or appointed justice living within the boundaries of the new precinct he was entitled to have continued in office for the remainder of the term to which he had been elected. His term having expired before the appellate court's decision, such officer recovered his salary from the time he was ousted from office to the date of expiration of such term.

Villareal clearly evidences the adequate state remedy available to the Appellees here, but, of especial significance to the case at hand, is what the Texas Court of Civil Appeals declared as follows:

> "In view of the disposition we have made of this case, *we do not consider appellant's contention that, since the office of justice of the peace is a county office, only residence within the county, as distinguished from residence within the justice precinct, is constitutionally required and that, therefore, Article 2351½, insofar as it attempts to make residence within the precinct a qualification for continuing in office, is unconstitutional.* Nor do we consider the contention that the order of January 13, 1969, is void as a violation of the 'one man, one vote' rule promulgated by the Supreme Court of the United States in several reapportionment cases."

Appellees in this case, like the Plaintiff in *Villareal,* have of course also advanced the contention that the offices of justice of the peace and constable are "county offices" within the meaning of Article 16, Section 14 and Article 5, Section 24 of the Texas Constitution (appended hereto as Exhibits K and L, respectively), and that, therefore, Appellees' residences need only be within the county as distinguished from residence within a specific precinct, notwithstanding the residency requirement of Article 1.05 of the Texas Election Code. Thus they contend that under the state constitution they should be treated no differently than are the county commissioners under section (b) of the statute.

If such a contention were to be upheld by the Texas Supreme Court, then Article 2351½(c), insofar as it attempts to make residence within the precinct a qualification for continuing in office following a redistricting as

occurred here, would be unconstitutional under the state constitution. Such a holding by the Texas court would of course be favorable to the Appellees and would avoid a federal constitutional decision under the Fourteenth Amendment.

With a very similar question confronting it, the United States Court of Appeals for the Fifth Circuit, in *Romero v. Coldwell,* 455 F.2d 1163, abstained from deciding whether the jurisdiction of a Texas justice of the peace was county-wide or confined to his precinct. In a class-suit seeking the application of the one-man, one-vote concept to justice precincts in El Paso County, Texas, the plaintiffs contended that a Texas justice of the peace has county-wide jurisdiction as opposed to that merely for his precinct and, therefore, one-man, one-vote should apply in the apportionment of a county's justice precincts. The United States Court of Appeals, unlike the District Court below which concluded that such jurisdiction is state-wide, citing only Texas statute Article 2385, with which conclusion Appellants strenuously disagree, exhaustively reviewed the Texas law relating to the question and concluded:

> "Clarity and unambiguity are lacking with respect to territorial jurisdiction of a Texas justice of the peace, given the disparity between C.C.P. arts. 4.12 and 45.22 which speak in terms of government units and C.C.P. art. 4.11, Tex. Rev. Civ. State. Ann. arts. 2385, 2460a, and Texas Const. art. V, § 19, all of which go to subject matter jurisdiction. *It is possible that the Texas Courts may flesh out the bare bones of the constitution and statutes by finding the boundary of the jurisdiction of a justice of the peace coincident with the precinct from which he is elected rather than county-wide.*
>
> * * *

> ". . . *thus, dismissal by the federal court is appropriate in order that the plaintiffs may proceed in the Texas courts if they wish but the dismissal must be without prejudice.* Barrett v. Atlantic Richfield Co., 444 F.2d 38 (5th Cir. 1971)." (Emphasis supplied)

Significantly, the doctrine of abstention has now been twice invoked by federal courts in the Southern District of Texas in cases involving Article 2351½ itself, both however relating to county commissioner precinct redistricting under section (a) rather than justice precinct redistricting under section (c). *Robinson v. Zapata County, Texas,* 350 F.Supp. 1193 (Laredo Division); *Carr v. Brazoria County, Texas,* 341 F.Supp. 155 (Galveston Division), affirmed 468 Fed.2d 950.

In *Robinson,* the Court declared:

> "Before this Court sets out to determine what Article 2351½(a) really means, or decides the fate of the Commissioner of Precinct No. Four and of those voters of former Precinct No. One who did not vote for him or anyone else for that office in 1970, and will not in 1972, the Texas courts should have a chance. Harris v. Samuels, 440 F.2d 748 (5th Cir. 1971), cert. den. 404 U.S. 832, 92 S.Ct. 77, 30 L.Ed.2d 62."

In *Carr,* the Court declared:

> ". . . portions of Article 2351½ have twice been deemed void under the State Constitution in advisory opinions of the Attorney General of Texas. See Op. Atty. Gen. No. M-68 (May, 1967); Op. Atty. Gen. No. M-562 (January, 1970). Finally, although the statute has been on the books since 1965, this Court is not aware that Article 2351½(a) has ever been authoritatively construed in any reported opinion of any Texas court."

Texas Attorney General advisory Opinion No. M-68, May 8, 1967, referred to in *Carr* above, concluded:

> "Under the facts submitted, a proposed transfer of voting precincts 142 and 158 from Justice Precinct No. 2 to Justice Precinct No. 1 of Bexar County, which does not affect the residence of any of the present office holders, will not create a vacancy in any of the offices of the two precincts, but *the provisions of Article 2351½c, Vernon's Civil Statutes, for continuation in the office of the incumbents after a change in boundaries of Justice Precincts, is unconstitutional as an attempt on the part of the Legislature to control that which has been vested exclusively with the Commissioners Courts.* To the extent of their conflict with this opinion, Attorneys General's Opinions V-790 (1949), V-1032 (1950), WW-536 (1958) and C-112 (1963) are overruled."

The writer of above Texas Attorney General Opinion No. M-68 declared therein that "If a change in boundary lines of itself creates a vacancy in the office by abolishing the existing precincts, then Article 2351½(c) collides with Section 28, of Article 5 of the Texas Constitution," which, in part, provides that "vacancies in the office of County Judge and *justices of the peace* shall be *filled* by the Commissioners Court until the next general election for such offices." The Opinion further declared that "the Commissioners Courts may, if they desire, effectuate a plan of succession of the type contemplated by Article 2351½(c), supra, but that their power to create vacancies or abolish offices cannot be taken away by the enactment of legislation."

The fallacy of Opinion No. M-68, it is submitted, lies in the fact that the writer mistakenly failed to distinguish between the *filling* of vacancies when and as they occur,

the authority for which under the appropriate state constitutional provisions rests alone with a county commissioners court, and the authority for decreeing *when* vacancies will occur, the exercise of which is reflected by the Texas Legislature's enactment of Article 2351½(c). Whether for this reason or others, suffice it to say that the Texas Court of Civil Appeals in *Villareal v. Brooks County*, supra, paid no heed to advisory Opinion No. M-68, and on the basis of such case, nor did the Harris County Commissioners Court in applying the statute to the redistricting in question.

To further highlight even greater the need for a definitive decision by the Texas Supreme Court on the matter in question, the Texas Attorney General on January 29, 1974, has issued yet another advisory opinion, which, while it does not treat of Article 2351½(c) specifically, further adds to the confusion of the Texas law about the very question involved in this case. In Texas Attorney General Opinion No. H-220, January 29, 1974, the full text of which is set out as Exhibit B of Appellee Zaboroski's Motion To Dismiss Or Affirm filed in response to Appellant's Jurisdictional Statement on this appeal, it is concluded:

> "Justices of the peace and constables, elected to a full term, are entitled to serve the entire four years and a redistricting of their precincts by the commissioners court resulting in a justice or constable not living in his precinct, does not vacate his office."

In arriving at such conclusion, the writer of the above Texas Attorney General opinion ignored altogether the provisions of Article 2351½(c), although he impliedly relied, in part, on the case of *Childress County v. Sachse*, 310 S.W.2d 414 (Tex. Civ. App. 1958, error refused,

n.r.e., Tex. Sup. Ct. at 312 S.W.2d 380), the case relating to the right of a county commissioner to continue serving after a redistricting even though his residence is outside of his precinct as redefined, and the holding of which was enacted into law as Section (b) of Article 2351½. See *Villareal v. Bustamente,* 480 S.W.2d 231 (Tex. Civ. App. 1972, no writ history).

The writer of such opinion also curiously set out and presumably in reliance thereon, Article 5, Section 24 of the Texas Constitution, which provides for the removal from office of justices of the peace and constables, among others, for "incompetency, official misconduct, habitual drunkenness, or other causes defined by law, upon the cause therefor being set forth in writing and the finding of its truth by a jury." Yet, in *Lamb v. State ex rel. Johnson,* 267 S.W.2d 285 (Tex. Civ. App. 1954, no writ history), it was expressly held that a removal suit against two school district trustees, based on the allegation that they had ceased to reside in the district and had thereby vacated their offices under the effect of state constitutional Article 16, Section 14, does not lie under Article 5, Section 24 of the Texas Constitution. The Texas Court of Civil Appeals declared:

> "Perhaps the strongest argument against the view that Article 16, § 14, does not provide another cause for removal under Article 5, § 24, is that the section does not so provide in so many words. Article 5, § 24, indicates a procedure whereby an individual may be removed from public office. *Article 16, § 14, on the other hand, relates to the office primarily, rather than to the individual occupying the same. In the event a certain state of facts exists, the constitutional mandate imperatively declares the office vacant."* See *State v. Reyna,* 333 S.W.2d 832, 836 (Tex. Sup. Ct. 1960), citing *Lamb* with approval.

Additionally, the reliance placed by the writer of Opinion No. H-220 on the case of *McGuire v. Hughes,* 452 S.W.2d 29 (Tex. Civ. App. 1970, no writ history), the full opinion of which is set out as Exhibit B to Appellants' Response To Apellees' Motions To Dismiss Or Affirm in this appeal, is a wholly misconcieved one. *McGuire* did not in any way involve a redistricting of the justice precincts of the county there involved. The validity of the precinct residency requirement found in Article 1.05 of the Texas Election Code and which is implicit in Article 2351½(c), as it relates to justices of the peace and constables following a redistricting, thus did not in any manner confront the Court in *McGuire.*

The holding in *McGuire* was solely and simply that "The fact that the Commissioners Court of Grayson County abolished the Office of Justice of the Peace, Precinct 1, Place 2, in 1967, does not, in our opinion, have the legal effect of reducing the constitutional four year term of Justice of the Peace, Precinct 1, Place 1, Grayson County to two years." In so holding, the Court relied solely on the effect of state constitutional Article 16, Section 65 (Exhibit J hereto), which sets out the constitutional timetable for the terms of office of all state and county office holders in Texas.

Additionally, the *McGuire Court* could have based its holding on the fact, as pointed out in its opinion, that the precinct in question contained a city of 8,000 inhabitants, and since state constitutional Article 5, Section 18 provides that in any such precinct there *shall* be elected two justices of the peace, the commissioners court's action of abolishing one of the two justice positions was wholly without constitutional authority. See *Grant v. Ammerman,* 451 S.W.2d 777 (Tex. Civ. App. 1970, error refused, n.r.e.).

McGuire v. Hughes is thus clearly distinguishable, both on the facts and the law, from the factual situation and the legal question propounded to the Texas Attorney General in his advisory opinion No. H-220, upon which Appellees so strongly rely. It is respectfully submitted that because the writer of Texas Attorney General Opinion No. H-220 erroneously relied both on *McGuire* and state constitutional Article 5, Section 24, the conclusion of such opinion is not the law of Texas. Indeed, that it is not the law of Texas is clearly borne out by the fact that it flies in the face of not only the statute Article 2351½(c) itself, but the case of *State ex rel. Dowlen v. Rigsby,* 43 S.W. 271 (Tex. Civ. App. 1897, approved by the Texas Supreme Court at 43 S.W. 1101), in which it was expressly declared that "the power to establish the precincts does not necessarily conflict with the provision fixing the terms of office. They must stand together. The office is taken subject to the power to change the boundaries of the precincts. * * * While the office is property, it is held subject to the proper exercise of all such powers as these. There is no contract between the state and its officers which forbids such action."

If in fact the conclusion of Texas Attorney General Opinion No. 220 is correct, it would render ineffectual state constitutional Article 5, Section 18 itself, under the terms of which a commissioners court is charged with the responsibility to divide and/or redivide its county into precincts, "not less than four and not more than eight." If the term of office of a justice of the peace or constable were inviolate, as the Texas Attorney General would conceive it to be, a commissioners court could never reduce the number of precincts from eight to a number not less than four no matter how compelling the needs of the people calling for such a reduction might be.

And this is necessarily so because under the staggering of the terms of such offices under state constitutional Article 16, Section 65, any reduction in the number of precincts from eight to a number not less than four, at whatever time such a reduction might occur, would necessarily cut short the terms of some of such officers in the precincts eliminated.

In *Telles v. Sample*, 500 S.W.2d 677 (Tex. Civ. App. 1973, error refused, n.r.e.), the plaintiff had been elected in the November 1972 general election as constable of precinct number one of El Paso County, Texas. In December the commissioners court ordered a redistricting effective January 1, 1973, reducing the county's justice precincts from eight to six and thereby eliminating plaintiff's position. In upholding a denial of the plaintiff's application for a mandamus to compel payment of his salary, the Court of Civil Appeals declared:

> "If the Commissioners Court has the authority to set the number of precincts at not less than four nor more than eight, it must have the authority to reduce the total number from eight to six, as was done in this instance. This necessarily means some elected officials will not be able to qualify and serve when redistricting takes place between the time of the election and the date such officials take office. But we find no constitutional or statutory time limit on when the Commissioners Court may order a redistricting plan into effect."

With regard to the specific question of whether or not justices of the peace and constables should be viewed as "county officers" within the meaning of state constitutional Article 16, Section 14, and as such be required to live only within the county as distinguished from residence within the precinct, as is expressly required by state

statute Article 1.05 of the Texas Election Code, the Texas courts should be given the opportunity to decide. In this case it is not without significance that at least one of the seven Appellees did in fact invoke his state court remedy, but abandoned it subsequently. That all of the seven Appellees could have pursued the adequate state remedy available to all in this matter is clearly borne out by the following declared by the Texas Supreme Court in the case of *Grant v. Ammerman,* 437 S.W.2d 547, 550 (Tex. Sup. Ct. 1969):

> ". . . the Commissioners Court of Harrison County, in making its June 18 order to abolish Place 1, Justice Precinct 5, was not acting under the election laws of Texas. *It was acting as the governing body of the county.* Williams v. Castleman, 112 Tex. 193, 247 S.W. 263 (1922). *The order is one which must be accorded the same consideration as the judgments of other courts.* Tarrant County v. Shannon, 129 Tex. 264, 104 S.W.2d 4 (1937); Ashburn Brothers v. Edward County, 58 S.W.2d 71 (Comm. App. 1931). *It was an order that is reviewable by the district court in the exercise of its general supervisory control over the orders of the commissioners court.* Article 5, § 8, Tex. Const.; Article 1908, Vern. Ann. Tex. Stat. Relator may seek relief in the district court. Scott v. Graham, 156 Tex. 97, 292 S.W.2d 324 (1956); Haverbekken v. Hale, 109 Tex. 106, 204 S.W. 1162 (1918); Bourgeois v. Mills, 60 Tex. 76 (1883); J. R. Phillips Investment Co. v. Road District No. 18 of Limestone County, 172 S.W.2d 707 (Tex. Civ. App. 1943, writ ref.); Rodriguez v. Vera, 249 S.W.2d 689, 692 (Tex. Civ. App. 1952)."

> "Since relator has an adequate remedy in the district court to challenge the order abolishing the office of Place 1, Justice Precinct 5, he should in-

> voke that court's jurisdiction. Brazos River Conservation and Reclamation Dist. v. Belcher, 139 Tex. 368, 163 S.W.2d 183 (1942); Glenn v. Milam, 114 Tex. 160, 263 S.W. 900 (1924); Matthaei v. Clark, 110 Tex. 114, 216 S.W. 856 (1920)."

Significantly, the aggrieved party in *Grant v. Ammerman* above, did in fact pursue his remedy in a state district court and on appeal was granted the relief which he sought. *Grant v. Ammerman,* 451 S.W.2d 777 (Tex. Civ. App. 1970, error refused, n.r.e.).

It is, therefore, submitted that the Appellees herein had an adequate state remedy, which though invoked by one of them and later abandoned, is still available to all. Such remedy, if pursued, would ultimately afford the Texas Supreme Court the opportunity to decide the question of whether or not justices of the peace and constables, like county commissioners under section (b) of Article 2351½, are "county officers" whose residences need only be within the county as distinguished from residence within a precinct. A state court decision so decreeing same would render Article 2351½(c), insofar as it attempts to make residence within the precinct a qualification for continuing in office following a redistricting, unconstitutional under the state constitutional provision Article 16, Section 14. Inasmuch as such a state decision would resolve the question on this appeal favorable to the Appellees, and thereby render unnecessary a federal constitutional decision under the Fourteenth Amendment, it is submitted that the District Court should have abstained from deciding this cause under the principles laid down in *Railroad Commission of Texas v. Pullman Co.,* 312 U.S. 496, as was done in *Romero v. Coldwell, Carr v. Brazoria County, Texas* and *Robinson v. Zapata County, Texas,* supra.

CONCLUSION

For the reasons stated, it is respectfully submitted that the judgment of the Court below should be reversed and judgment here entered in favor of the Harris County Commissioners Court, Appellants; in the alternative, it is respectfully urged that the judgment of the Court below be reversed and remanded with directions that the District Court enter a judgment of dismissal on the ground of abstention, without prejudice to the Appellees to reenter the federal forum once they have exhausted proceedings in the Texas courts.

Respectfully submitted,

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CERTIFICATE OF SERVICE

1) The undersigned counsel for the Appellants do hereby certify that on this 12th day of July, 1974, they did deposit in the United States Mail, by Certified Mail, Return Receipt Requested, addressed to each of the following Appellees' Attorneys at the address shown, three (3) true and correct copies of this instrument, entitled, "Brief For The Appellants."

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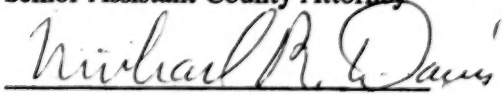
(2) All parties required to be served have been served.

Signed:

EDWARD J. LANDRY
Senior Assistant County Attorney



MICHAEL R. DAVIS
Assistant County Attorney

Attorneys for Appellants

APPENDIX

This appendix contains the following listed exhibits:

Exhibit A —Judgment Order of the District Court

Exhibit B — Opinion of the District Court

Exhibit C — Article 2351½, Vernon's Annotated Texas Civil Statutes

Exhibit D — Article 5, Section 18, Vernon's Annotated Texas Constitution

Exhibit E — Precinct Map before redistricting

Exhibit F — Precinct Map after redistricting

Exhibit G — Article 1.05, Vernon's Annotated Texas Election Code

Exhibit H — Article 2355, Vernon's Annotated Texas Civil Statutes

Exhibit I — Article 1908, Vernon's Annotated Texas Civil Statutes

Exhibit J — Article 16, Section 65, Vernon's Annotated Texas Constitution

Exhibit K — Article 16, Section 14, Vernon's Annotated Texas Constitution

Exhibit L — Article 5, Section 24, Vernon's Annotated Texas Constitution

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
Houston Division

CIVIL ACTION NO. 73-H-993

RICHARD E. MOORE, J. C. BOLTON, VERNON G. DOERING, J. W. MAHAN, GENE ZABOROSKI, and JOHN HOWE BOYNTON, on His Own Behalf and on Behalf of Every Resident Citizen of the Former Justice of the Peace Precincts Nos, 5, 6, and 7 of Harris County, Texas

v.

HARRIS COUNTY COMMISSIONERS COURT, WILLIAM ELLIOTT, Individually and as County Judge of Harris County, E. A. LYONS, Individually and as a Member of the Harris County Commissioners Court, ROBERT ECKELS, Individually and as a Member of the Harris County Commissioners Court, JAMIE BRAY, Individually and as a Member of the Harris County Commissioners Court, and TOM BASS, Individually and as a Member of the Harris County Commissioners Court

ORDER

This action came on for hearing before a three-judge district court composed of the Honorable Thomas G. Gee, Circuit Judge, the Honorable John V. Singleton, Jr., District Judge, and the Honorable Carl O. Bue, Jr., District Judge, and the issues having been duly heard and decison having been duly rendered.

It is ORDERED and ADJUDGED that

I. This court has jurisdiction under Title 28, U.S. C.A. § 2281.

II. The Texas statute Article 2351½, Vernon's Ann. Civ. St., is facially unconstitutional.

III. The order of the Commissioners Court of Harris County, Texas, of June 28, 1973, complained of herein issued pursuant thereto is therefore permanently enjoined.

An opinion of this court will follow.

DONE at Houston, Texas, on this the 30th day of January, 1973.

/s/ _____
Thomas G. Gee
Circuit Judge

/s/ _____
John V. Singleton, Jr.
District Judge

/s/ _____
Carl O. Bue, Jr.
District Judge

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
Houston Division

NO. 73-H-993

RICHARD E. MOORE, ET AL

v.

HARRIS COUNTY COMMISSIONERS COURT, ET AL

NO. 73-H-1033

BLACKIE NEELEY

v.

HARRIS COUNTY COMMISSIONERS COURT, ET AL

Before GEE, Circuit Judge, SINGLETON and BUE, District Judges. GEE, Circuit Judge:

Plaintiffs are duly elected Justices of the Peace, Constables and voters of three former Harris County precincts which have been abolished by order of defendants, the County Judge and Commissioners of Harris County, Texas. At the time of the order, and today, the terms to which the plaintiff office-holders were elected had not expired. The Commissioners acted under authority of a Texas Constitutional provision[1] permitting revision of precincts from time to time "for the convenience of the people" and Article 2351½, Texas Revised Civil Statutes. This article provides, in pertinent part, as follows:

1. Tex. Const. Art. 5, §18.

> (c) When boundaries of justice of the peace precincts are changed, so that existing precincts are altered, new precincts are formed, or former precincts are abolished, if only one previously elected or appointed justice of the peace or constable resides within a precinct as so changed, he shall continue in office as justice or constable of that precinct for the remainder of the term to which he was elected or appointed. If more than one justice or constable resides within a precinct as so changed, or if none resides therein, the office shall become vacant and the vacancy shall be filled as other vacancies; provided, however, that in precincts having two justices, if two reside therein, both shall continue in office, and if more than two reside therein, both offices shall become vacant.

The manner in which defendants' order redrew the Harris County precinct lines resulted in the vacating of Plaintiffs' offices by force of the quoted portion of the statute.

The statute is attacked on numerous grounds, most of which we need not discuss, since we conclude that its effect to end the term of some of the duly elected justices of the peace and constables of Harris County constitutes an impermissible abridgement of the franchise of those entitled to vote for them and a violation of the equal protection clause, both without the showing of any compelling state interest to be served thereby.

Defendants are local officers, functioning pursuant to statewide policies embodied in the constitutional and statutory provisions cited. An injunction is sought on constitutional grounds against the effect of Article 2351½ to truncate the term of some of the plaintiffs and set at nought the vote of those who elected them to these offices.

These offices are the creation of state law; the jurisdiction of the offices in question is statewide,[2] and the statute attacked is of statewide effect and impact. The constitutional issues raised are not facially insubstantial, and the complaints clearly called for the convening of a three-judge court.

We are not unmindful of the decision in *Snowden v. Hughes,* 321 U.S. 1 (1944), in which the right of a citizen to be a candidate for state office was held to be unprotected by the privileges and immunities clause of the Fourteenth Amendment, or that in dicta the court extended its holding to the right to vote and hold such office. But we are persuaded that this case is not controlled by *Snowden.*

In the first place, on its facts *Snowden* involved a candidacy only. We treat here of a Texas state office, which has been repeatedly held by the courts of Texas to be a species of property, *e.g., State ex rel Jennett v. Ownes,* 63 Tex. 261 (1885). The Fourteenth Amendment might well be seen as extending protection to an elected and qualified office-holder, but not to a mere aspirant as in *Snowden.*

In the second place, it appears that events have marched by the view taken in *Snowden* of the division of state and federal responsibilities.[3] More recent Supreme Court decisions have sapped the force of *Snowden's* vision of the federal structure. The "privileges and immunities" clause of the Fourteenth Amendment has become irrele-

2. E.g. Arts. 2835, 6885, Tex. Rev. Civ. Stat. The jurisdiction of a justice of the peace is to be distinguished from the venue limitations of Art. 2390, R.C.S.

3. See Mancuso v. Taft, 476 F.2d 187, 196-97 n. 14 (1st Cir. 1973).

vant in considering protection of the right to run and vote for state office. Modern concepts of equal protection have assumed that burden. *Bullock v. Carter,* 405 U.S. 134, 31 L.Ed.2d 92 (1972); *Whjte v. Regester,* ____ U.S.____, 37 L.Ed.2d 314 (1973); *Harper v. Virginia Bd. of Elections,* 383 U.S. 663, 16 L.Ed.2d 169 (1966); cf. *Oregon v. Mitchell,* 400 U.S. 112, 27 L.Ed.2d 272 (1970).

Insofar as Art. 2351½ operates to truncate the term of a duly elected public official upon the circumstance that a mere convenience redistricting places him in a district with others, it invidiously and irrationally discriminates between him and others not so affected and between the effect of the votes of those who voted or were entitled to vote in his election and voters whose franchise was not so bobbed. No compelling interest was here served by such discrimination.[4] Certainly it was not necessary to effect redistricting in mid-term or, if that were thought pressing, it was not compelling that the office be declared vacant as a result. Indeed, the analogous section pertaining to county commissioners, Art. 2351½ (b), expressly provides that the term of office of a county commissioner is not to be affected by redistricting, even though its effect may be to place his residence outside the precinct for which he was elected.

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4. Defendants' only contention which approaches advancing such an interest for *redistricting* is that the old precincts were egregiously disproportionate in population. This is true, but the new districts were clearly not drawn with any ideal of population equality foremost in mind; the order establishing them itself recites that one contains almost two and one-half times as many people as another. Nor would population equalization, if seen as a compelling reason for redistricting and faithfully served in drawing the new precincts, bear any necessary relation to vacating these offices, a different consideration entirely.

The duly elected justices of the peace and constables, plaintiffs here, are entitled to serve the terms to which they were elected. Insofar only as Article 2351½, Texas Revised Civil Statutes mandates otherwise, it is unconstitutional. Insofar only as defendants' order of January 30, 1973, undertakes to appoint other persons to plaintiffs' offices, and to prevent plaintiffs from carrying out the duties and receiving the emoluments of their offices during the term to which they were elected, it is likewise invalid.

/s/ _____
Thomas Gibbs Gee
United States Circuit Judge

/s/ _____
John V. Singleton, Jr.
United States District Judge

/s/ _____
Carl O. Bue, Jr.
United States District Judge

EXHIBIT C

Art. 2351½. Change in boundaries of commissioners precincts and justice of the peace precincts

(a) Whenever the Commissioners Court changes the boundaries of commissioners precincts or of justice precincts, it may specify in its order a future date, not later than the first day of January following the next general election, on which the changes shall become effective. If an election for any precinct office is held before the effective date of the order, the office shall be filled at the election by the voters of the precinct as it will exist on the effective date of the change in boundaries. A person who has resided within the territory embraced in the new boundaries for the length of time required to be eligible to hold the office shall not be rendered ineligible by virtue of the precinct's not having been in existence for that length of time.

(b) When boundaries of commissioners precincts are changed, the terms of office of the commissioners then in office shall not be affected by such change, and each commissioner shall be entitled to serve for the remainder of the term to which he was elected even though the change in boundaries may have placed his residence outside of the precinct for which he was elected.

(c) When boundaries of justice of the peace precincts are changed, so that existing precincts are altered, new precincts are formed, or former precincts are abolished, if only one previously elected or appointed justice of the peace or constable resides within a precinct as so changed, he shall continue in office as justice or constable of that precinct for the remainder of the term to which he was elected or appointed. If more than one justice or constable

resides within a precinct as so changed, or if none resides therein, the office shall become vacant and the vacancy shall be filled as other vacancies; provided, however, that in precincts having two justices, if two reside therein, both shall continue in office, and if more than two reside therein, both offices shall become vacant.

Added by Acts 1965, 59th Leg., p. 1523, ch. 664, § 1, eff. Aug. 30, 1965.

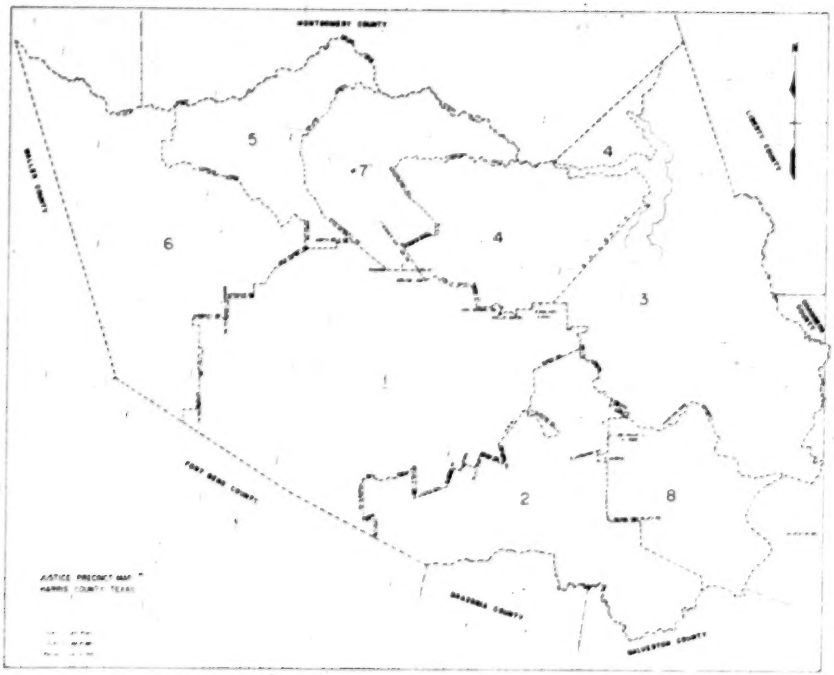
EXHIBIT D

Article 5, Texas Constitution

§ 18. Division of counties into precincts; election of constable and justice of the peace; county commissioners and county commissioners court

Section. 18. Each organized county in the State now or hereafter existing, shall be divided from time to time, for the convenience of the people into precincts, not less than four and not more than eight. Divisions shall be made by the Commissioners Court provided for by this Constitution. In each such precinct there shall be elected one Justice of the Peace and one Constable, each of whom shall hold his office for four years and until his successor shall be elected and qualified; provided that in any precinct in which there may be a city of 8,000 or more inhabitants, there shall be elected two Justices of the Peace. Each county shall in like manner be divided into four commissioners precincts in each of which there shall be elected by the qualified voters thereof one County Commissioner who shall hold his office for four years and until his successor shall be elected and qualified. The County Commissioners so chosen, with the County Judge as presiding officer, shall compose the County Commissioners Court, which shall exercise such powers and jurisdiction over all county business, as is conferred by this Constitution and the laws of the State, or as may be hereafter prescribed. As amended Nov. 2, 1954.

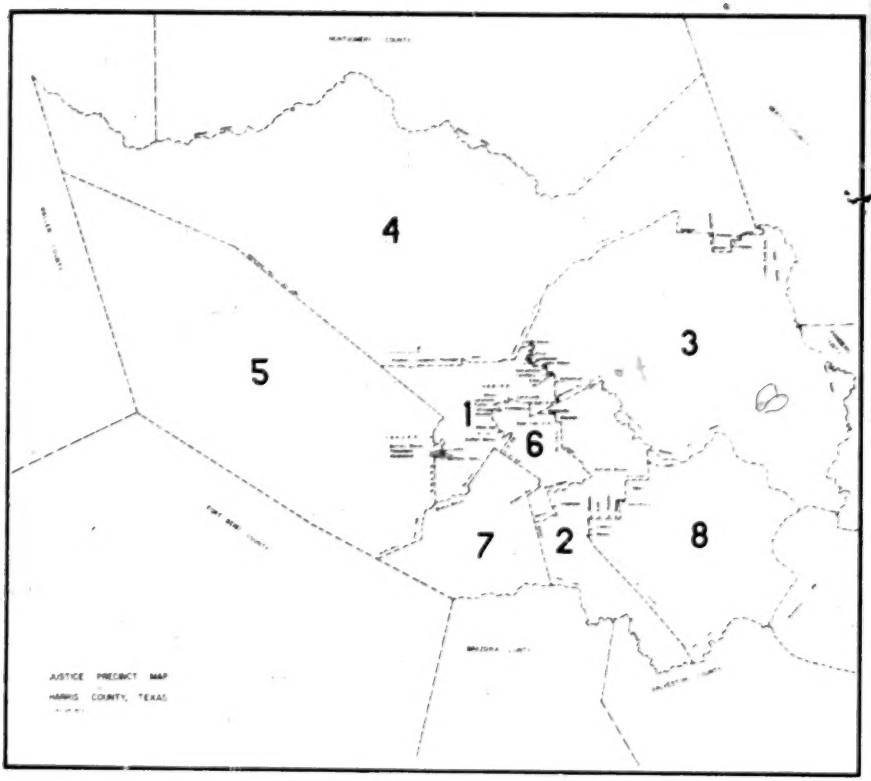
EXHIBIT E



BEFORE REDISTRICTING

Precinct	Population
1	999,424
2	436,974
3	111,106
4	81,879
5	6,966
6	8,848
7	11,976
8	84,739

EXHIBIT F



AFTER REDISTRICTING

Precinct	Population
1	343,765
2	146,054
3	169,997
4	175,769
5	337,844
6	180,101
7	238,401
8	149,981

EXHIBIT G

TEXAS ELECTION CODE

Art. 1.05. Ineligibility

No person shall be eligible to be a candidate for, or to be elected or appointed to, any public office in this state unless he is a citizen of the United States eligible to hold such office under the Constitution and laws of this state and is under none of the disabilities for voting which are stated in Article VI, Section 1 of the Constitution of Texas on the date of his appointment or of the election at which he is elected, and unless he will have resided in this state for a period of twelve months next preceding the applicable date specified below, and for any public office which is less than statewide, shall have resided for six months next preceding such date in the district, county, precinct, municipality or other political subdivision for which the office is to be filled:

(1) For a candidate whose name is printed on the ballot for a general (first) primary election, the applicable date is the last day on which any candidate for the office involved could file his application to have his name printed on the ballot for that primary election.

(2) For an independant or nonpartisan candidate in a general or special election, the applicable date is the last day on which the candidate's application for a place on the ballot could be delivered to the appropriate officer for receiving the application.

(3) For a write-in candidate, the applicable date is the day of the election at which the candidate's name is written in.

(4) For a party nominee who is nominated by any method other than by primary election, the applicable date is the day on which the nomination is made.

(5) For an appointee to an office, the applicable date is the day on which the appointment is made.

The foregoing requirements shall not apply to any office for which the Constitution or statutes of the United States or of this state prescribe qualifications in conflict herewith, and in case of conflict the provisions of such other laws shall control.

Except as provided in Section 104 of the code, no ineligible candidate shall ever have his name placed upon the ballot at any primary, general or special election. No ineligible candidate shall ever be voted upon nor have votes counted for him at any such primary, general or special election for the purpose of nominating or electing him, but votes cast for an ineligible candidate shall be taken into account in determining whether any other candidate received the necessary vote for nomination or election. No person who advocates the overthrow by force or violence or change by unconstitutional means of the present constitutional form of government of the United States or of this state, shall be eligible to have his name printed on any official ballot in any general, special or primary election in this state.

Amended by Acts 1967, 60th Leg., p. 1861, ch. 723, § 4, eff. Aug. 28, 1967.

EXHIBIT H

ARTICLE 2355—Power of Commissioners Court to fill vacancies

The Court shall have power to fill vacancies in the office of: County Judge, County Clerk, Sheriff, County Attorney, County Treasurer, County Surveyor, County Hide Inspector, Assessor of Taxes, Collector of Taxes, Justices of the Peace, Constables, and County Superintendent of Public Instruction. Such vacancies shall be filled by a majority vote of the members of said Court, present and voting, and the person chosen shall hold office until the next general election.

Const. art. 8, sec. 9; Amendment 1899. Amended by Acts 1927, 40th Leg., 1st C.S., p. 248, ch. 90, § 1.

EXHIBIT I

ARTICLE 1908—Jurisdiction of State District Court over Commissioners Courts

Such court shall also have appellate jurisdiction and general supervisory control over the commissioners court, with such exceptions and under such regulations as may be prescribed by law.

EXHIBIT J

ARTICLE 16, TEXAS CONSTITUTION

§ 65. Transition from two year to four year terms of office

Sec. 65. Staggering Terms of Office—The following officers elected at the General Election in November, 1954, and thereafter, shall serve for the full terms provided in this Constitution:

(a) District Clerks; (b) County Clerks; (c) County Judges; (d) Judges of County Courts at Law, County Criminal Courts, County Probate Courts and County Domestic Relations Courts; (e) County Treasurers; (f) Criminal District Attorneys; (g) County Surveyors; (h) Inspectors of Hides and Animals; (i) County Commissioners for Precincts Two and Four; (j) Justices of the Peace.

Notwithstanding other provisions of this Constitution, the following officers elected at the General Election in November, 1954, shall serve only for terms of two (2) years: (a) Sheriffs; (b) Assessors and Collectors of Taxes; (c) District Attorneys; (d) County Attorneys; (e) Public Weighers; (f) County Commissioners for Precincts One and Three; (g) Constables. At subsequent elections, such officers shall be elected for the full terms provided in this Constitution.

In any district, county or precinct where any of the aforementioned offices is of such nature that two (2) or more persons hold such office, with the result that candidates file for "Place No. 1," "Place No. 2," etc., the officers elected at the General Election in November, 1954, shall serve for a term of two (2) years if the

designation of their office is an uneven number, and for a term of four (4) years if the designation of their office is an even number. Thereafter, all such officers shall be elected for the terms provided in this Constitution.

Provided, however, if any of the officers named herein shall announce their candidacy, or shall in fact become a candidate, in any General, Special or Primary Election, for any office of profit or trust under the laws of this State or the United States other than the office then held, at any time when the unexpired term of the office then held shall exceed one (1) year, such announcement or such candidacy shall constitute an automatic resignation of the office then held, and the vacancy thereby created shall be filled pursuant to law in the same manner as other vacancies for such office are filled. As amended Nov. 4, 1958.

EXHIBIT K

ARTICLE 16, TEXAS CONSTITUTION

Sec. 14. All civil officers shall reside within the State; and all district or county officers within their districts or counties, and shall keep their offices at such places as may be required by law; and failure to comply with this condition shall vacate the office so held.

EXHIBIT L

ARTICLE 5, TEXAS CONSTITUTION

Sec. 24. County Judges, county attorneys, clerks of the District and County Courts, justices of the peace, constables, and other county officers, may be removed by the Judges of the District Courts for incompetency, official misconduct, habitual drunkenness, or other causes defined by law, upon the cause therefor being set forth in writing and the finding of its truth by a jury.